PENALTY CALCULATION METHODOLOGY
FOR THE
ROMAN CATHOLIC BISHOP OF SACRAMENTO, A CORPORATE SOLE
TRINITY PINES CATHOLIC CENTER
PLACER COUNTY

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: Enforcement Policy.

VIOLATION 1 – FAILURE TO IMPLEMENT BAT/BCT BMPS

The Trinity Pines Catholic Center project (Project) received coverage under the Construction General Storm Water Permit (CGP) on 27 August 2018. The CGP categorizes construction projects into three different risk levels (1, 2, and 3) based on a combination of a site-specific sediment risk calculation and the receiving water risk based on the receiving water's impairments or beneficial uses. Risk Level 1 projects have less stringent best management practice (BMP) and monitoring requirements than Risk Level 2 or Risk Level 3 projects. In preparing the permit registration documents, the Project's Qualified Storm Water Pollution Plan Developer (QSD) correctly calculated the Project's Risk Level as a Risk Level 2 project as defined by the CGP. The risk level calculation is based on a calculated "medium" sediment risk of 73.9 tons/acre and a "high" receiving water risk based on the watershed where the Project is located.

During a site inspection on 16 November 2018, Central Valley Water Board staff (Board staff) observed that the Project's Storm Water Pollution Prevention Plan (SWPPP) did not include the necessary components to meet the Construction General Permit's requirements for a Risk Level 2 project. The Project SWPPP failed to identify appropriate erosion control BMPs to be installed prior to storm events and it failed to identify sampling locations for stormwater discharges. The Prosecution Team alleges that failure to prepare a SWPPP that complied with the General Permit requirements for the Risk Level of the project is a violation of the General Permit. Section XIV.A.3 of the General Permit states that the SWPPP shall be designed to meet the following objectives: Site BMPs are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-storm water discharges from construction activity to the BAT/BCT standard.

Table 1: Violation 1 Penalty Factors and Discussion

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.

PENALTY FACTOR	VALUE	DISCUSSION
Potential for harm	Moderate	The failure to prepare a SWPPP that met the Risk Level 2 requirements represents a moderate "Potential for Harm". Risk Level 2 requirements include temporary erosion control BMPs on active disturbed soil areas and storm water sampling locations to monitor the effectiveness of the Project's BMPs. Using a SWPPP that did not include all Risk Level 2 requirements on a Risk Level 2 Project substantially impairs the Board's ability to perform its statutory and regulatory function by not collecting storm water monitoring data to evaluate BMPs and presents a substantial threat to beneficial uses
Deviation from requirement	Moderate	The "Deviation from Requirement" is moderate because the Discharger only partially complied with the General Permit's SWPPP preparation requirement by preparing a less stringent Risk Level 1 SWPPP for a Risk Level 2 site. The Risk Level 1 SWPPP did not adequately protect the active construction site during storm events and ensure that the Project's BMPs were designed to reduce or eliminate pollutants in storm water to the BAT/BCT standard.
Per day factor	0.3	Board staff issued a Notice of Violation for the deficient SWPPP that was received by the Discharger on 28 December 2018. A revised SWPPP that met the Construction General Permit's requirements for a Risk Level 2 Project was uploaded to SMARTS on 4 January 2019. Although the Project was required to have a Risk Level 2 SWPPP in place at the start of the Project, Board staff is using its enforcement discretion assessing penalties starting from the date that the NOV was received by the Discharger. Board Staff allege that the Discharger was in violation of this requirement for a period of 8 days.
Days of violation	8	The Prosecution Team did not calculate the volume of discharge at this time. The Prosecution Team reserves the right to assess penalties for the volume discharged if this matter proceeds to hearing.
Initial Liability for Violation #1	$24,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day ($10,000/day).

PENALTY FACTOR	VALUE	DISCUSSION
Adjustment for Discharger Conduct Culpability	1.3	The original SWPPP was prepared by a Qualified SWPPP Developer (QSD) that is aware of the Construction General Permit's requirements. The SWPPP was not prepared for a Risk Level 2 project, in accordance with legal requirements; therefore, a culpability factor of 1.3 is appropriate.
Adjustment for Discharger Conduct History of Violations	1.0	Board staff are not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Adjustment for Discharger Conduct Cleanup and Cooperation	1.0	Board staff informed the Discharger that the SWPPP did not meet Risk Level 2 requirements on 19 November 2019 following the initial Board Staff inspection on 16 November 2019. The Project Owner directed the QSD to correct the SWPPP on 19 November 2019. The Discharger submitted a revised SWPPP on 4 January 2019, after receiving the 28 December 2018 NOV. It took over six weeks to submit a revised SWPPP after the initial notification that the SWPPP was deficient. Therefore, Board Staff is applying a cleanup and cooperation factor of 1.0 for this violation.
Total Base Liability for Violation #1	$31,200	The base liability is calculated as the initial liability multiplied by each of the above three factors.

VIOLATION 2 – FAILURE TO IMPLEMENT BAT/BCT BMPS

During site inspections during rain events on 27 and 29 November 2018, Board staff observed that the Project did not have BMPs that meet the Construction General Permit's requirements. Dischargers in all Risk Levels are required to implement BMPs that minimize or prevent pollutants in storm water discharges using the best available technology economically achievable (BAT) for toxic pollutants and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants, also referred to as the BAT/BCT standard. During the 29 November 2018 inspection, Board staff collected storm water discharge samples that had a measured turbidity ranging from 756 Nephelometric Turbidity Units (NTU) to 2,730 NTU. These turbidity values were well above the Construction General Permit's 250 NTU Numeric Action Level. Discharge of storm water from a construction site without implementation of BMPs that meet the BAT/BCT standard is a violation of the Construction General Permit. The Effluent Standards in Attachment D, section A.1.b of the Construction General Permit state: Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.

Table 2: Violation 2 Penalty Factors and Discussion

PENALTY FACTOR	VALUE	DISCUSSION
Physical, chemical, biological, or thermal characteristics of the discharge	2	Discharges of turbidity can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Harm or Potential for harm to beneficial uses	1	Discharge from the Project flows to an unnamed creek which discharges to Rollins Reservoir which is on the Bear River. Board staff collected storm water discharge samples from the Project on 29 November 2019 that had a measured turbidity ranging from 756 Nephelometric Turbidity Units (NTUs) to 2,730 NTUs. The beneficial uses of the Bear River include aquatic freshwater habitat and wildlife habitat. Due to the distance and dilution expected between the discharge locations and water bodies with beneficial uses, the discharge was expected to have a minor impact to beneficial uses and was not likely to cause appreciable harm.
Susceptibility to cleanup or abatement	1	The turbid discharge was distributed over a long distance and cleanup or abatement of 50% or more of the material would not be possible

PENALTY FACTOR	VALUE	DISCUSSION
Per gallon and per day factor for discharge violations	0.08	The "Deviation from Requirement" is major because the Discharger did not implement several requirements of the General Permit, rendering the permit's BAT/BCT effluent standard ineffective. The value of 0.08 was determined from Table 1 of the Enforcement Policy.
Volume discharged	n/a	The Prosecution Team did not calculate the volume of discharge at this time. The Prosecution Team reserves the right to assess penalties for the volume discharged if this matter proceeds to hearing.
Adjustment for high volume discharges	n/a	The Prosecution Team did not calculate the volume of discharge at this time. The Prosecution Team reserves the right to assess penalties for the volume discharged if this matter proceeds to hearing.
Days of discharge	5	According to NOAA rainfall data from station "Colfax 3.1 SW, CA US US1CAPC0011", there were a total of five days of rainfall over 0.5 inches between the first Water Board inspection on 16 November 2018 and the QSP's 24 December 2018 inspection. Board staff allege that runoff was generated at the Project on days where over 0.5 inches of rain was documented at the nearby weather station. The 24 December 2018 inspection contains photographs which appear to show that the Project had BMPs that were in substantial compliance with Construction General Permit requirements. Board staff allege that discharges from the Project occurred on five days during this period when BMPs did not meet the Construction General Permit's BAT/BCT standard.
Initial Liability for Violation #2	$4,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day ($10,000/day).
Adjustment for Discharger Conduct Culpability	1.3	The Discharger has applied for and received permit coverage under the General Permit for numerous construction sites in California. The Discharger also retained a QSD and QSP that are aware of the Construction General Permit's BMP requirements. Therefore, the Discharger should be aware of the General Permit requirements and should have implemented its SWPPP.
Adjustment for Discharger Conduct History of Violations	1.0	Board staff are not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.

PENALTY FACTOR	VALUE	DISCUSSION
Adjustment for Discharger Conduct Cleanup and Cooperation	1.1	Minor improvements were observed during Board staff's follow-up inspections; however, it took over a month before BMPs in compliance with Construction General Permit requirements were installed at the Project and in place during rain events. Therefore, Board Staff is applying a cleanup and cooperation factor of 1.1 for this violation.
Total Base Liability for Violation #2	$5,720	The base liability is calculated as the initial liability multiplied by each of the above three factors.

VIOLATION 3 – FAILURE TO IMPLEMENT APPROPRIATE EROSION CONTROL BMPS

During the Water Board Staff site inspection on 16 November 2018, Board staff observed that effective erosion control BMPs, such as straw or hydraulic mulch, were not installed in active construction areas. A 24 December 2018 inspection report conducted by the Project's QSP is the first inspection report that contains photographs showing that appropriate erosion control BMPs were installed. The Prosecution Team alleges that failure to implement appropriate erosion control BMPs during the rain events that occurred between 16 November 2018 and 24 December 2018 is a violation of the General Permit. Attachment D, section E.1 in the General Permit states in part: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction. Areas under active construction are defined in the General Permit as areas undergoing land surface disturbance, including construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage.

Table 3: Violation 3 Penalty Factor and Discussion

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	Moderate	The failure to install appropriate erosion and sediment controls led to the discharge, or potential for discharge of sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	Moderate	The "Deviation from Requirement" is moderate because the Discharger. Following the first inspection, the Discharger began installation of erosion control BMPs
Per day factor	0.3	Determined from Table 3 in the Enforcement Policy. The lower end of the range was chosen at this time.
Days of violation	5	Although the Discharger is in violation of this requirement for all days that rainfall was recorded between 16 November 2018 and 24 December 2018, Board staff only assessed penalties for the five days where rainfall exceeded 0.5 inches as documented at the nearby weather station as events under 0.5 inches likely did not generate storm water runoff.

PENALTY FACTOR	VALUE	DISCUSSION
Initial Liability for Violation #1	$15,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day ($10,000/day).
Adjustment for Discharger Conduct Culpability	1.3	The Discharger has applied for and received permit coverage under the General Permit for numerous construction sites in California. The Discharger also retained a QSD and QSP that are aware of the Construction General Permit's BMP requirements. Therefore, the Discharger should be aware of the General Permit's requirements and should have implemented its SWPPP.
Adjustment for Discharger Conduct History of Violations	1.0	Board staff are not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Adjustment for Discharger Conduct Cleanup and Cooperation	1.0	Minor improvements were observed during Board staff's follow-up inspections; however, it took over a month before erosion control BMPs in compliance with Construction General Permit requirements were in place during rain events. Therefore, Board staff is applying a cleanup and cooperation factor of 1.1 for this violation.
Total Base Liability for Violation #3	$19,500	The base liability is calculated as the initial liability multiplied by each of the above three factors.

OTHER FACTOR CONSIDERATIONS

Total Base Liability for all violations is $56,420. The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

Table 4: Other Factor Considerations for Final Liability Amount

OTHER FACTORS	VALUE	CONSIDERATIONS
Ability to pay and continue in business	No adjustment	The Roman Catholic Diocese of Sacramento is a large organization. Board staff does not have information suggesting that the Discharger cannot pay the proposed penalty and continue in business.
Economic benefit	$11,700	Board staff estimated the economic benefit for each violation. Avoided costs and delayed costs are considered when calculating the economic benefit. The costs to mitigate violations 1 and 2 were delayed costs. The economic benefit for these violations was assumed to be negligible due to the short duration of the Project. The cost for violation 3 was an avoided cost and was calculated to be $11,700. See the attached Economic Benefit spreadsheet for details.
Other factors as justice may require	No adjustment	The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Central Valley Water Board has incurred over $5,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.
Maximum liability	Over $180,000	Based on California Water Code section 13385, the maximum liability is $10,000 per day per violation and $10 per gallon. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing.
Minimum liability	$12,870	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
Final Liability	**$56,420**	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability but cannot exceed the maximum liability.